



April 14, 2004

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The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

Board of Supervisors  
Michael D. Antonovich  
Yvonne Brathwaite Burke  
Don Knabe  
Gloria Molina  
Zev Yaroslavsky

**CONCESSION AGREEMENT  
DIAMOND AND ELIAS RESTAURANTS, INC.  
JOHN ANSON FORD AMPHITHEATRE  
(ALL DISTRICTS - 4 VOTES)**

**Commissioners**

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President  
Adrienne Hall  
Vice President  
Hope Warschaw  
Secretary  
Marjorie Lyte  
Executive Committee  
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Immediate Past President  
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Judith Galperson  
Betty Haagen  
Ronald D. Rosen  
Rosalind Wyman

Laura Zucker  
Executive Director

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve and authorize the chair to execute the concessions agreement with Diamond and Elias Restaurants, Inc., to provide food and beverage concessions at the John Anson Ford Amphitheatre for the 2004 season, May 1, 2004 through November 1, 2004 with an option to renew for an additional five years.

**PURPOSE/ JUSTIFICATION OF RECOMMENDED ACTION**

Food and beverage concessions have become an increasingly popular and in demand portion of the Ford experience, with total concession sales last season reaching nearly \$125,000. Box dinners can be ordered in advance and picnic tables on the entryway plaza are often fully occupied well before performance times.

The Ford has historically had difficulty in finding an appropriate concessionaire. Reasons include a performance schedule that is not consistent throughout the week (most performances take place on weekends) and a relatively low volume of customers as compared to other facilities such as the Hollywood Bowl (which has almost fifteen times the capacity of the Ford). Additionally, the Ford has no kitchen facilities on site, so all food must be prepared elsewhere and brought in nightly.

A specialized concessionaire is needed that can provide the quality menus the Ford's patrons expect and the flexibility to accommodate the unique venue. To date, Diamond and Elias Restaurants, Inc., which operates Mark's Restaurant on La Cienega Blvd. in Hollywood, has been an excellent match. For the past 7 years, Diamond and Elias Restaurants, Inc. has worked well with the Ford's weekend centered performance schedule. The restaurant has provided the full kitchen necessary for food preparation. In addition, the restaurant's proximity to the venue is convenient for food delivery and for handling emergencies as they arise.

The attached concession agreement has been executed by Diamond and Elias Restaurants, Inc. and County Counsel has approved the contract as to form.

### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

The recommended action is consistent with the County Strategic Plan Goals of Service Excellence and Fiscal Responsibility as the proposed 2004 series will 1) provide the public with quality food and beverage service at the Ford Amphitheatre and 2) further public private partnerships within Los Angeles County.

### **FISCAL IMPACT/ FINANCING**

The County will receive twenty percent (20%) of the gross receipts from all concession sales at the Ford. This represents a five percent (5%) increase in the County percentage from the previously negotiated rate used for the past 7 years and will generate estimated seasonal revenues of approximately \$25,000.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Diamond and Elias Restaurants, Inc. were originally selected following an RFP process issued for the 1997 season. The concession contract, which covered six seasons at the Ford Amphitheatre, expired at the end of the 2002 season, at which time an extension of the contract was approved for the 2003 season. Subsequently, an RFP was issued and Diamond and Elias Restaurants was again selected for the concessions contract. The new contract contains the same basic provisions as the original 1997 contract with the following adjustments:

- The county will collect twenty percent (20%) of gross receipts from sale of concessions (up from 15%).
- The cost of maintenance and repairs of County owned equipment provided to concessionaire will be shared equally by the County and the concessionaire, unless concessionaire, through willful neglect or misconduct, causes the need for maintenance or repair. Previously, the cost of maintenance and repairs was solely borne by the County. This change is anticipated to save the County approximately \$2,500 annually.

### **CONTRACTING PROCESS**

A detailed RFP was drafted and posted to the County's bid web site. Research was done into businesses providing similar types of service at other venues in the area, as well as local restaurants and caterers, and follow-up calls were made to announce the RFP to such businesses. In response, 14 food service professionals requested copies of the RFP, including a cross section of local caterers, restaurants, gourmet delis and concessionaires. Of the 14 businesses that indicated early interest in the RFP, four (4) potential proposers attended the on-site walk-thru. Of the four (4) potential proposers, only Diamond and Elias, Inc. submitted a proposal. The most recurrent and common

reasons given for not submitting a proposal were a) the small volume of business compared to other larger venues, b) the seasonal nature of the operation, and c) the lack of onsite kitchen facilities.

The Ford is a unique venue with specialized concession needs and requires a qualified food service provider who is willing and able to meet the physical and financial challenges inherent to the operation. Diamond and Elias, Inc., knowing the difficulties yet ready to work with us to increase sales and service to Ford patrons, provided a complete and competitive proposal and responded favorably to questions and issues raised during a subsequent thorough interview process. Based on their prior history at the Ford, materials submitted as part of this RFP process, and responses to interview questions, management feels confident that this concessionaire is a good match for providing the desired services, has negotiated favorable terms of a new agreement, and recommends that Diamond and Elias, Inc. be selected as the concessionaire for the Ford's upcoming Summer Season.

The Arts Commission has evaluated and determined that the contractor fully complies with the requirements of the Living Wage Program (County Code Chapter 2.201) and agrees to pay its full-time employees providing County services a living wage.

Respectfully submitted,

Laura Zucker  
Executive Director

Attachments (1)

c: Director, Parks and Recreation  
County Counsel

**CONCESSION AGREEMENT FOR THE  
OPERATION OF CONCESSIONS AT THE  
JOHN ANSON FORD AMPHITHEATRE**

This **Agreement** is entered into this \_\_\_\_ day of April, 2004, by and between the County of Los Angeles ("County"), a body corporate and politic, and Diamond & Elias Restaurants Inc. ("Concessionaire").

**RECITALS**

**WHEREAS**, Los Angeles County Arts Commission ("Arts Commission") operates the John Anson Ford Amphitheatre ("Ford Theatre"), a regional park of the County; and,

**WHEREAS**, concession services for food and beverage are an important and crucial component of the Ford Theatre's operations; and,

**WHEREAS**, a prior concessions agreement expired at the conclusion of the 2003 season; and,

**WHEREAS**, Concessionaire is willing and able to provide such services in accordance with the terms and conditions prescribed hereinafter;

**NOW, THEREFORE**, for and in consideration of the foregoing premises and mutual promises, covenants and conditions set forth herein, the parties do hereby agree as follows:

**Section 1. Concession Operations Granted.** (a) Concessionaire is hereby authorized and required to sell food and beverages, including alcoholic beverages, from the Ford Theatre concession locations.

(b) The privilege granted herein is exclusive only as to:

(1) the Concession Premises as defined in **Section 2 (a)** hereinafter, and

(2) the sale of food and beverages to the general public attending performances at the Ford Theatre.

(c) The County retains the right to authorize a third party caterer to provide food and beverage services to the Ford Theatre user-groups having parties, receptions, and similar special events at the Ford Theatre; and to artists performing at the Ford Theatre. With respect to these events, the County grants to Concessionaire a right of first refusal to provide such catering services.

(d) Concessionaire shall provide a thirty percent (30%) discount on food and fifty (50%) discount on non-alcoholic beverages to staff members working at the Ford Theatre provided that such staff members are not County employees.

(e) Concessionaire staff will not be charged any fees for parking at the Ford Theatre.

(f) Concessionaire shall use reasonable efforts to obtain and maintain all permits and licenses required to sell beer and wine. Concessionaire shall be responsible for cost of said permits and licenses and associated renewal fees.

**Section 2. Concession Premises.** (a) The concession shall be conducted from Ford Theatre locations:

- (1) in the upper (3<sup>rd</sup>) level concession building;
- (2) in the mid (2<sup>nd</sup>) level bar area; and/or
- (3) from portable carts or tables – subject to the prior approval of the Los Angeles County Department of Health – situated in pre-approved areas, at least one of which shall be located in the Entryway unless otherwise deemed unnecessary by the Managing Director

which are hereby licensed for use as the Concession Premises.

(b) The Concession Premises shall be used only and exclusively for concession purposes, and such other purposes as are related thereto provided written approval therefor is granted by the Managing Director of the John Anson Ford Theatres (“Managing Director”), and for no other purposes whatsoever.

(c) Concessionaire acknowledges personal inspection of the Concession Premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect the concession. Concessionaire accepts the Concession Premises in their physical condition, and agrees to make no demands upon County for any improvements or alteration thereof.

(d) Concessionaire may make or construct or cause to be made or constructed additions, alterations, repairs or changes in the Concession Premises at Concessionaire’s expense, provided written approval thereof is first obtained from the Managing Director which approval shall not be unreasonably withheld; permits are obtained as required; and there is compliance with such terms and conditions relating thereto, as may be reasonably imposed thereon by the Managing Director.

(e) Concessionaire hereby acknowledges the title of County, and/or any other public agencies having jurisdiction thereover, in and to the Concession Premises and the improvements located thereon, and covenants and agrees never to assail, contest or resist said title.

(f) Ownership of all structures, buildings or improvements constructed by Concessionaire upon the Concession Premises and all alterations, additions or betterments thereto, shall be Concessionaire’s until termination of this Agreement. Upon termination hereof, whether by expiration of the term, cancellation, forfeiture or otherwise, ownership thereto shall vest in County, without compensation being paid therefor, and such structures, buildings and/or improvements shall be surrendered with the Concession Premises, unless demand for the removal thereof shall be given by the Managing Director at least ninety (90) days prior to the date of termination. Should Concessionaire fail to remove said structures, buildings and improvements, same may be sold, removed or demolished, and Concessionaire shall reimburse County for any cost or expense in connection therewith in excess of any consideration received by County as a result of said sale, removal or demolition.

**Section 3. Term.** (a) The term of the concession operation shall commence upon approval by the Board of Supervisors, and terminate at the close of business on November 2, 2004, or such later period required for filing or processing payments, reports, or other required documents as set forth herein.

(b) In the event Concessionaire holds over beyond the term herein provided with the consent, express or implied of County, such holding shall be from month to month only, subject to the conditions of this Agreement; shall not be a renewal hereof, and shall be at the monthly compensation provided herein.

(c) Concessionaire shall have the option of renewing this agreement for an additional consecutive five (5) year term on condition written notice of the exercise thereof is given within two months after the date of termination of this agreement or any extension thereof. Such option may only be exercised if the Concessionaire is not in default of this agreement. In the event of the exercise of the

option granted herein, the payment for said option period shall not be less than the payment provided herein.

**Section 4. Payment.** (a) Concessionaire shall pay County, for the concession use granted herein, TWENTY PERCENT (20%) of monthly gross receipts of concessions.

(b) When the Managing Director and Concessionaire find that a percentage of gross receipts is not suitable or applicable for a particular activity not otherwise provided for herein, the Managing Director and Concessionaire may agree to a minimum monthly amount and/or percentage rent as payment for the privilege of engaging therein. Said amount shall be set in writing by mutual consent of the Managing Director and Concessionaire and shall be reasonable in accordance with the revenue to be generated therefrom.

(c) Payment shall be made to the Arts Commission on or before the twenty-fifth (25th) day of the calendar month following each month of the term provided herein. Payment may be made by check or draft issued and payable to the Los Angeles County Arts Commission, and mailed or otherwise delivered to the Managing Director of the John Anson Ford Theatres, 2580 Cahuenga Blvd. East, Hollywood, CA 90068. In the event payment is not made on or before said date, a late charge of **TWO PERCENT (2%)** per month shall be added to the unpaid amount.

**Section 5. Accounting Records.** (a) Concessionaire shall be required to maintain a method of accounting which shall, to the satisfaction of the County's Auditor-Controller, correctly and accurately reflect the gross receipts of Concessionaire in connection with the concession. The method of accounting, including bank accounts, established for the concession shall be separate from the accounting system used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs.

(b) All sales shall be recorded by means of cash registers which publicly display the amount of each sale and automatically issue a customers receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

(c) All documents, books and accounting records shall be open for inspection and reinspection during business hours and upon reasonable notice at the Concessionaire's place of business during the term of this Agreement and for twelve (12) months thereafter. In addition, the County Auditor-Controller may from time to time conduct an audit and re-audit of the books and business maintained by Concessionaire. If the report of gross sales made by Concessionaire to the County Auditor-Controller should be found to be less than the amount of gross sales disclosed by such audit, Concessionaire shall pay the delinquent amount within thirty (30) days of billing therefor. If the additional amount due exceeds **FIVE PERCENT (5%)** of the total amount which should have been paid as determined by such review or audit and observation and there is no reasonable basis for the failure to report and pay thereon, Concessionaire shall also pay the cost of the audit and the penalty heretofore provided for delinquent payments. To the extent permitted by law, all information obtained in connection with the County Auditor-Controller's inspection of records or audit shall be treated as confidential information and exempt from public disclosure thereof.

(d) Concessionaire shall furnish the Arts Commission with a monthly gross receipts report showing the amount payable therefrom to the County. Such a report shall accompany each monthly payment required to be made as provided herein. The monthly reporting period shall be by calendar month, rather than monthly anniversary date of the effective date of this Agreement.

**Section 6. Operating Responsibilities.** (a) **Compliance with Law.** Concessionaire shall conform to and abide by all municipal and County ordinances, and all State and federal laws and

regulations, insofar as the same or any of them are applicable; and where permits and/or licenses are required for the concession and/or any construction authorized herein, the same must be first obtained from the regulatory agency or agencies having jurisdiction over such area.

(b) **Compliance with Rules and Regulations.** Concessionaire shall conform to and abide by all rules and regulations of the County, including, but not be limited to, those of the County Board of Supervisors, the County Arts Commission, and the County Department of Parks and Recreation, insofar as the same or any of them are applicable.

(c) **Disorderly Persons.** Concessionaire will make a reasonable effort not to allow any loud, boisterous or disorderly persons to loiter about the Concession Premises.

(d) **Illegal Activities.** Concessionaire shall not permit any illegal activities to be conducted upon the Concession Premises.

(e) **Signs.** Concessionaire shall not post signs or advertising matter upon the Concession Premises or improvements thereon, unless prior approval therefor is obtained from the Managing Director, which approval shall not be reasonably withheld.

(f) **Advertising and Promotional Materials.** Concessionaire shall not promulgate nor cause to be distributed any advertising, or promotional materials unless prior approval thereof is obtained from the Managing Director. Said approval shall not be unreasonably withheld or delayed and shall be deemed to be given if no objection is made within fifteen (15) days following the request for approval. Such materials include, but are not limited to, advertising in newspapers, magazines and trade journals, and radio and/or television commercials.

(g) **Credit in Promotional Material.** Concessionaire agrees that any advertising or promotional materials promulgated by Concessionaire which contain the name of the John Anson Ford Amphitheater, or any derivative thereof, shall also include the phrase "A Los Angeles County Regional Park Operated by the Los Angeles County Arts Commission" unless specifically approved otherwise by the Managing Director.

(h) **Non-Interference.** Concessionaire shall not interfere with the public use of the Ford Theatre.

(i) **Concessionaire's Staff and Employment Practices.** Concessionaire shall maintain an adequate and proper staff for its authorized operations. Concessionaire shall designate one member of its staff as a General Manager with whom County may deal on a daily basis. Any person selected by Concessionaire as the General Manager shall be skilled in the management of businesses similar to the concession operation and shall be subject to reasonable approval by the Managing Director. The General Manager shall devote substantial time and attention to the operation authorized herein and render such services and convenience to the public as are required. The General Manager shall be fully acquainted with the concession operation, familiar with the terms and the conditions prescribed therefor by this Agreement, and authorized to act in the day-to-day operation thereof. Concessionaire shall also designate a member of its staff as the onsite Event Operations Manager responsible for supervising daily activity and acting as the key point person for interacting with County staff during events when the General Manager is not onsite.

(1) The Managing Director may at any time give Concessionaire written notice to the effect that the conduct or action of a designated employee of Concessionaire is, in the reasonable belief of the Managing Director, detrimental to the interest of the public patronizing the concession. Concessionaire shall meet with representatives of the Managing Director to consider the appropriate course of action with respect to such matter and Concessionaire shall take reasonable measures under the circumstances to assure the Managing Director that the conduct and activities of

Concessionaire's employees will not be detrimental to the interest of the public patronizing the concession.

(2) Concessionaire warrants that it fully complies with all laws regarding employment of aliens, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). Concessionaire shall obtain, from all covered employees performing services hereunder, all verification and other documentation of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. Concessionaire shall retain such documentation for all covered employees for the period prescribed by law. Concessionaire shall indemnify, defend, and hold harmless, the County, its officers and employees from employer sanctions and any other liability which may be assessed against Concessionaire or County or both in connection with any alleged violation of federal statutes or regulation pertaining to the eligibility for employment of persons performing services under this Agreement.

(3) The Concessionaire shall comply with all applicable provisions of the federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the federal Fair Labor Standards Act, for work performed by the Concessionaire's employees for which the County may be found jointly or solely liable.

(4) **Staff Identification.** (A) Concessionaire shall provide all staff providing services under this Agreement with a photo identification badge in accordance with County specifications. Specifications may change at the discretion of the County and Concessionaire will be provided new specifications as required. The format and content of the badge is subject to the County's approval prior to the Concessionaire implementing the use of the badge. Concessionaire's staff, while on duty or when entering the Ford Theatre and Concession Premises or its grounds, shall prominently display the photo identification badge on the upper part of the body.

(B) Concessionaire shall establish a dress code for its staff working onsite at the Ford that shall apply on event days when the Ford Theatre is open to the general public. The dress code shall project a professional image of Concessionaire's operations and those of the Ford, and is subject to the County's approval.

(C) Concessionaire shall notify the County within one business day when staff are terminated or otherwise removed from working under this Agreement. Concessionaire is responsible to retrieve and immediately destroy the staff's photo identification badge at the time of removal.

(D) If County requests the removal of Concessionaire's staff, Concessionaire is responsible to retrieve and immediately destroy the staff person's photo identification badge at the time of removal.

(j) **Days and Hours of Operation.** Concessionaire shall keep the concession open for business each day of a scheduled event at the Ford Theater. The minimum hours of operation shall be from two (2) hours prior to the starting time of each evening event and from one (1) hour prior to the starting of each Saturday morning family event and until the end of family events and through the intermission of evening events. Any changes in the days and hours for operation heretofore prescribed, including staggered openings and closings of the different locations of the Concession Premises, shall be subject to approval by the Managing Director, not to be unreasonably withheld.

(k) **Prices.** Concessionaire shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public based on the



following considerations: intent of concessions to serve the needs of the public for the goods and/or services supplied at a fair and reasonable cost; comparability of prices with those charged for similar goods and/or services at similar concessions in the Los Angeles Metropolitan Area; and reasonableness of profit margin in view of cost of providing same in compliance with the obligations assumed in this Agreement. In the event the Managing Director notifies Concessionaire that prices being charged are not fair and reasonable, Concessionaire shall have the right to confer with the Managing Director and justify said prices. Following reasonable conference and consultation thereon, Concessionaire shall make such price adjustments as may be reasonably ordered by the Managing Director. Concessionaire may appeal the determination of the Managing Director to the Arts Commission, whose decision thereon shall be final and conclusive. However, Concessionaire shall comply with the ordered price adjustment pending the appeal and final ruling thereon by the Arts Commission.

(l) **Removal of Objectionable Goods and Services.** Concessionaire shall immediately remove or withdraw from sale any goods or services which may reasonably be found objectionable to the public welfare by the Managing Director following receipt of written notification therefor.

(m) **Quality of Goods and Services.** Service to the public, with goods, services, and merchandise of the best quality and at reasonable charges, is of prime concern to County and is considered a part of the consideration for this Agreement. Therefore, Concessionaire agrees to operate and conduct operations in a first-class manner, and comparable to other first-class theater facilities providing similar events, programs and services. Where such facilities are provided, Concessionaire shall furnish and dispense foods and beverages of the best quality and shall maintain a high standard of service at least equal to that of similar facilities in adjacent communities, and to those prevailing in such areas for similar products and services, and without discrimination. Concessionaire, following receipt of written notification therefor, shall immediately withdraw or remove from sale any goods or services which may reasonably be found objectionable to the Managing Director based on findings that the provision of such goods or services may be harmful to the public welfare.

(n) **Utilities.** County shall provide and pay for any necessary on-site utilities, including an internal phone service with local area dialing privileges. Concessionaire waives any and all claims against County for compensation for loss or damage caused by a defect, deficiency or impairment of any utility system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the Concession Premises except to the extent that such loss or damage is caused by the negligent or intentional misconduct of County.

(o) **Sanitation.** County shall provide sufficient trash receptacles near the Concession Premises and shall provide trash removal on a regular basis. No offensive matter or refuse or substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain on the Concession Premises and within a distance of fifty (50) feet thereof, and Concessionaire shall prevent any accumulation thereof from occurring. Concessionaire shall see that all refuse is collected as often as necessary from the Concession Premises and placed in the trash receptacles. Concessionaire shall break down cardboard boxes or other bulky materials prior to placing them in trash receptacles, and shall make reasonable efforts to direct recyclables into the appropriately labeled receptacles.

(p) **Maintenance.**

(1) Structure: County shall be responsible for performing any and all repairs to the roof, exterior walls, foundation, concealed utility lines and hot water heater of the Concession Premises. Other than these items, Concessionaire shall be responsible for maintaining the Concession Premises in good and substantial repair and condition.

(2) Equipment: The cost of any and all maintenance and/or repairs of equipment owned by County and provided in Concession Premises shall be equally split between County and Concessionaire, except that Concessionaire shall be solely responsible to the extent that any loss or damage is caused by the negligent or intentional misconduct of Concessionaire. Should County and

Concessionaire agree that replacement of a piece of equipment owned by County is a more appropriate remedy than repair and/or maintenance, Managing Director and Concessionaire shall meet to develop a replacement plan (including, if appropriate, any sharing of costs associated with such replacement) and timeline for such replacement. Concessionaire shall perform any and all repairs required for the maintenance of its own equipment.

(3) Maintenance and repairs shall be performed in compliance with all laws applicable thereto.

(4) All maintenance shall be commenced within thirty (30) days of the need thereof and diligently prosecuted to completion of same, except where the state of disrepair is such that an emergency or hazard is created thereby in which event there shall be an immediate correction thereof. Either party may cure the default of the other party hereto with respect to the maintenance obligations assumed herein, and upon performance thereof shall acquire a right of reimbursement therefrom for the reasonable actual costs of same, including, but not limited to, the cost of labor, materials and equipment furnished in the correction thereof, provided there is prior mutual agreement between the Managing Director and Concessionaire upon the nature and scope of the work to be performed and the costs to be incurred therein. Any demand of County for reimbursement hereunder shall be satisfied by Concessionaire through payment of the sums deposited with County as security for faithful performance, and/or prorata monthly installment payments over the remaining term of the Agreement, commencing with the month next succeeding the date of completion of the maintenance performed. Any demand of Concessionaire for reimbursement hereunder shall be satisfied by County through a credit against the monthly payment obligation of Concessionaire, commencing with the month next succeeding the date of completion of the maintenance performed, and for each and every other month of the remaining term of the Agreement, until a total credit has been provided up to the lesser of the Agreement, until a total credit has been provided up to the lesser of the actual costs of cure or the rental reserved over said remaining term. If the costs advanced by Concessionaire exceed the balance of the monthly payment obligation, County shall pay the balance within thirty (30) days of the end of the term hereof.

(q) **Security Devices.** Concessionaire may provide any legal devices, installations, or equipment designed for the purpose of protecting the Concession Premises from theft, burglary or vandalism, provided written approval for installation is first obtained from the Managing Director. All purchases and installations thereof shall be at Concessionaire's expense. County shall have no responsibility with respect to any property of Concessionaire, and Concessionaire shall bear all risk of loss, theft or damage to its own property at all times unless such loss or damage is a result of the negligent or intentional misconduct of County.

(r) **Health & Safety.** Concessionaire shall comply with all applicable Health Department and occupational health and safety regulations and requirements. Concessionaire shall immediately correct any unsafe, unhealthful and/or unsanitary condition of the Concession Premises, as well as any unsafe, unhealthful and/or unsanitary practices occurring thereon. Concessionaire shall obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring on the Concession Premises. Concessionaire shall cooperate fully with County in the investigation of any accidental injury or death occurring on the Concession Premises, including a prompt report thereof to the Managing Director.

(s) **Trade Fixtures.** County has provided and installed appliances, furniture, fixtures and equipment (hereinafter, "trade fixtures") for the Concession Premises, and may (or may not) provide and install additional trade fixtures during the term of this Agreement. Concessionaire may also provide additional trade fixtures during the term of this Agreement. During the last thirty (30) days preceding the termination of this Agreement, Concessionaire shall remove any appliances, furniture, fixtures and equipment Concessionaire has provided from the Concession Premises, other than for those items which have been furnished by County or so affixed that their removal therefrom cannot be accomplished without damage to the realty. Should Concessionaire fail to so remove said appliances, furniture, fixtures and equipment within said thirty (30) day period, Concessionaire shall lose all right, title and interest in and thereto, and County may elect to keep same upon the premises or to sell, remove

or demolish same. Concessionaire shall reimburse County for any cost incurred in excess of any consideration received from the sale, removal or demolition thereof.

(t) **Merchandise.** Concessionaire shall provide and maintain the necessary inventory of concession merchandise required to meet the needs of the public. All food and beverages sold or kept for sale by Concessionaire shall be first class in quality and shall conform to the federal, State and County food laws, ordinances and regulations in all respects. No adulterated, misbranded or impure articles shall be sold or kept for sale by Concessionaire, and all merchandise kept on hand by Concessionaire shall be stored and handled with due regard for sanitation. In the event food is below first class, the Managing Director shall have the right to order the improvement of the quality of any food kept or offered for sale.

(u) **Habitation.** The Concession Premises shall not be used for human habitation, other than approved night security personnel.

(v) **Credit Card Acceptance.** Unless otherwise approved by the Managing Director, Concessionaire shall accept payment by at least three different types of major credit cards at a minimum of one concessions location. Concessionaire may request in writing to the Managing Director establishment of a preferred minimum purchase threshold for credit card use below which Concessionaire need not accept credit card charges, which approval shall not be unreasonably withheld. The location and any approved purchase threshold shall be clearly posted so as to be apparent to the public.

**Section 7. Destruction of Concession Premises and/or Ford Theatre.** (a) In the event the Concession Premises shall be totally or partially destroyed by fire, earthquake, flood, storms, war, insurrection, riot, public disorder or casualty, County shall either restore the premises or terminate this Agreement.

(b) If the premises are restored, this Agreement shall continue in full force and effect, except that the payments to be made by Concessionaire shall be abated and/or other relief afforded to the extent that the Managing Director may determine the damage and/or restoration interferes with the concession, provided a claim therefor is filed with the Managing Director within one hundred (100) days of written notice of election to restore the premises. Any such claim shall be denied, if the destruction of the Concession Premises is found by an expert investigator to have been caused by the fault or neglect of Concessionaire.

(c) Concessionaire agrees to cooperate in the determination of the abatement and/or relief to be provided by furnishing all information requested relative to the concession, and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

(d) Concessionaire shall cooperate in the restoration of the Concession Premises by vacating and removing therefrom all items of Concessionaire's inventory, trade fixtures, equipment and furnishings for such periods as are required for the restoration thereof.

(e) The aforesaid provisions of this **Section 7** shall also be applicable to a total or partial destruction of the Ford Theatre by the aforementioned causes, except that the relief to be provided shall be based upon the extent the Managing Director may determine that the reduction in the public's use of Ford Theatre due to the partial or total closure thereof has affected the concession.

(f) Concessionaire agrees to accept the remedy heretofore provided in **Section 7 (a)** in the event of a destruction of the Concession Premises and/or John Anson Ford Theatre and hereby waives any and all additional rights and remedies for relief or compensation that are presently available or may hereinafter be made available under the laws and statutes of this State.

**Section 8. Construction by County Affecting Concession Premises and/or Ford Theatre.** (a) In the event County shall construct or cause to be constructed a new facility for the

concession, this Agreement shall continue in full force and effect, except that the payments to be made by Concessionaire shall be abated and/or other relief afforded to the extent that the Managing Director may determine the construction interferes with the concession; provided a claim therefor is filed with the Managing Director within one hundred (100) days of commencement of construction. County shall provide sixty (60) days written notice of construction which interferes with the concession.

(b) Concessionaire agrees to cooperate with the County in the event the construction affects the Concession Premises by vacating and removing therefrom all items of Concessionaire's inventory, trade fixtures, equipment and furnishings for such periods as are required for the construction of the new facilities. Concessionaire further agrees to cooperate in the determination of the abatement and/or relief to be provided by furnishing all information requested relative to the concession, and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

(c) Following completion of the new facilities, Concessionaire shall resume the concession therefrom within thirty (30) days of written notice from the Managing Director that the Concession Premises are tenantable.

(d) The aforementioned provisions of this **Section 8** shall also be applicable in the event of performance of work on the Ford Theatre that requires a partial or total closure thereof, except that the abatement and/or other relief to be provided shall be based upon the extent the Managing Director may determine that the reduction in the public's use of the Ford Theatre that requires a partial or total closure thereof has affected the concession.

(e) Concessionaire agrees to accept the remedy heretofore provided in **Section 8 (a)** in the event of construction upon the Concession Premises and/or the Ford Theatre, and hereby waives any and all additional rights and remedies for relief or compensation that are presently available or may be made available hereinafter under the laws and statutes of this State.

**Section 9. Security Deposit.** (a) Prior to the commencement of this Agreement, Concessionaire shall pay to the Arts Commission the sum of **ONE THOUSAND DOLLARS (\$1,000.00)**. In lieu thereof, Concessionaire may deposit said amount in a bank or other depository institution whose deposits are insured under the Federal Deposit Insurance Act (12 U.S.C. § 1811 *et seq.*) provided that a certificate of deposit is delivered to Managing Director giving County the right to withdraw any or all of said amount during the term of this Agreement. Concessionaire shall be entitled to any and all interest accruing from said certificate of deposit.

(b) Said sum shall serve as security for faithful performance of all covenants, promises and conditions assumed by Concessionaire herein, and may be applied in satisfaction and/or mitigation of damages arising from a breach thereof, including, but not limited to, delinquent payments; correction of maintenance deficiencies; securing required insurance; loss of revenue due to abandonment, vacation or discontinuance of concession operations; discrimination; refunding of deposits for scheduled future events which are required to be canceled due to abandonment, vacation or discontinuance of concession operations, completion of construction; and payment of mechanic's liens. Application of amounts on deposit in satisfaction and/or mitigation of damages shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

(c) In the event any or all of said amount is applied in satisfaction and/or mitigation of damages, Concessionaire shall immediately deposit such sums as are necessary to restore the security deposit to the full amount required hereunder.

(d) Said sum shall be returned to Concessionaire within sixty (60) days upon termination of this Agreement less any amounts that may be withheld therefrom by County as heretofore provided, along with a written, detailed accounting of deductions.

**Section 10. Independent Contractor.** (a) This Agreement is by and between the County and Concessionaire and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association, as between County, its special districts and commissions and Concessionaire.

(b) The Concessionaire shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Concessionaire.

(c) Concessionaire understands and agrees that all persons furnishing services on behalf of Concessionaire pursuant to this Agreement are, for purposes Workers' Compensation Liability, employees solely of Concessionaire and not of the County. Concessionaire shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person that is an employee of the Concessionaire, for injuries arising from or connected with services on behalf of Concessionaire pursuant to this Agreement.

(d) The Concessionaire represents and warrants to the County, and County will rely on such representation and warranty, that the Concessionaire (including its employees and agents) has the necessary skills, competence and expertise to fully and completely perform the specialized services called for under this Agreement.

(e) As an independent contractor, Concessionaire has no power or authority to bind the County to any obligations, agreements, or contracts.

**Section 11. Hold Harmless and Indemnification.** Concessionaire agrees to indemnify, defend and hold harmless County, its special districts, elected and appointed officials, employees and agents from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with Concessionaire's operations or its services hereunder, including any Worker's Compensation suits, liability or expense, arising from or connected with services performed on behalf of Concessionaire by any person pursuant to this Agreement. Concessionaire's duty to indemnify County shall survive the expiration or other termination of this Agreement.

**Section 12. Insurance.** (a) Without limiting Concessionaire's indemnification of County, Concessionaire shall provide and maintain at its own expense during the term of this Agreement the hereinafter listed program(s) of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) satisfactory to County's Risk Manager and evidence of such programs satisfactory to County shall be delivered to the Managing Director on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall contain the express condition that County is to be given at least thirty (30) days advance written notice of any modification or termination of any program of insurance. All such insurance shall be primary to and not contributing with any other insurance maintained by the County and, with the exception of Workers' Compensation insurance, shall name the County as an additional insured.

(b) At all times during the term of this Agreement, Concessionaire shall provide and maintain the following forms and amounts of insurance:

(1) **Liability:** Comprehensive General Liability insurance endorsed for Independent Contractor, Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than **ONE MILLION DOLLARS (\$1,000,000.00)** per occurrence. If such insurance is written on a Claims Made Form, such insurance shall be endorsed to provide an extended reporting period of not less than five years following termination of this Agreement.

(2) **Workers' Compensation:** A program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the *California Labor Code*, including Employees Liability with a **ONE MILLION DOLLAR (\$1,000,000)** limit covering all persons Concessionaire is legally required to cover.

(3) **Comprehensive Auto Liability:** A program of insurance endorsed for all owned, non-owned, and hired vehicles with a combined single limit of not less than **ONE HUNDRED THOUSAND DOLLARS (\$100,000)** per occurrence.

(c) Failure on the part of Concessionaire to procure or maintain required insurance shall constitute a material breach of contract upon which County may immediately terminate this Agreement.

(d) Conduct of the concession shall not commence until Concessionaire has complied with the insurance requirements contained in this **Section 12**. Further, said operations, whether in whole or in part, shall be subject to suspension by the Managing Director during any period that Concessionaire fails to maintain said policies in full force and effect.

(e) No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Concessionaire to furnish insurance during the term of this Agreement. At least thirty (30) days prior to the expiration of any such policy, a signed and complete certificate of insurance with all endorsements required herein, showing that such insurance coverage has been renewed or extended shall be filed with Managing Director.

**Section 13. Transfers.** (a) The County hereby agrees that **Diamond & Elias Restaurants Inc.** is the Concessionaire to provide food and beverage services. Concessionaire shall not additionally, without written consent of the Managing Director, which shall not be unreasonably withheld, assign, hypothecate, or mortgage this Agreement or sublicense any portion of the services described in this Agreement.

(b) Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Concessionaire shall be binding upon any transferee thereof.

(c) The concession shall not be transferable by testamentary disposition or the State laws of intestate succession, as the rights, privileges, and use conferred by this Agreement shall terminate prior to the date for expiration thereof in the event of death of the principal owner(s) of Concessionaire occurring within the term herein provided. Additionally, neither this Agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Concessionaire, or by any process of law including proceedings under any federal or State bankruptcy, insolvency or reorganization law.

(d) Shareholders and/or partners of Concessionaire may transfer, sell, exchange, assign or divest themselves of any interest they may have in therein. *However*, in the event of such sale, transfer, exchange, assignment or divestment is effected in such a way as to give majority control of Concessionaire to any person(s), corporation, partnership or legal entity other than the majority controlling interest therein at the time of the execution of this Agreement, approval thereof shall be required. Consent to any such transfer shall only be refused by the County, if the Managing Director finds that the transferee is lacking in experience and/or financial ability to conduct the concession.

(e) The prohibition herein contained shall not be applicable with respect to transfers of this Agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and conditions of a hypothecation or mortgage previously approved by the Managing Director.

**Section 14. Nondiscrimination.** (a) Concessionaire hereby certifies and agrees that it will comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, HOA.175329.1

the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, where applicable, and Title 43, part 17 of the Code of Federal Regulations Subparts A and B, and the Americans with Disabilities Act of 1990, and other federal and State anti-discrimination statutes, to the end that no persons shall on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age or disability, be subject to discrimination under the privileges and use granted by this Agreement or under any project, program or activity supported by this Agreement.

(b) Concessionaire certifies and agrees that all persons employed thereby, are and shall be treated equally without regard to or because of race, creed, color, national origin, sex, age, marital status, or disability, and in compliance with all federal and State laws prohibiting discrimination in employment, including, but not limited to, the Federal Civil Rights Act of 1964; the Unruh Civil Rights Act; and the State Fair Employment Practices Act.

(c) Concessionaire certifies and agrees that subcontractors, bidders and vendors thereof are and shall be selected without regard to or because of race, creed, color, national origin, sex, age, marital status, or disability.

(d) All employment records shall be open for inspection and reinspection during business hours at the Concessionaire's place of business during the term of this Agreement for the purpose of verifying the practice of non-discrimination by Concessionaire in the areas heretofore described, subject to California privacy laws.

(e) If County finds that any of the above provisions have been violated, the same shall constitute a material breach of contract upon which County may determine to cancel, terminate, or suspend this Agreement. County reserves the right to determine independently that the nondiscrimination provisions of this Agreement have been violated. In addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that the Concessionaire has violated State or federal non-discrimination laws or regulations shall constitute a finding by County that Concessionaire has violated the nondiscrimination provisions of this Agreement.

**Section 15. Concessionaire's Acknowledgment of County's Commitment to Child Support Enforcement.** (a) The Concessionaire acknowledges that the County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. The Concessionaire understands that it is the County's policy to encourage all County contractors to voluntarily post the County's "L.A.'s Most Wanted: Delinquent Parents" poster in a prominent position at the contractor's primary place of business. The County's Child Support Services Department will supply the Concessionaire with the poster to be used.

**Section 16. Concessionaire's Warranty of Adherence to County's Child Support Compliance Program.** (a) The Concessionaire acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through purchase order or agreement are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

(b) As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Concessionaire's duty under this Agreement to comply with all applicable provisions of law, the Concessionaire warrants that it is now in compliance and shall during the term of this Agreement maintain compliance with employment and wage reporting requirements as required by the federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

**Section 17. Easements.** County reserves the right to establish, grant, or utilize easements or rights of way over, under, along and across the Concession Premises for utilities and/or

public access to the Ford Theatre providing County shall exercise such rights in a manner as will avoid any substantial interference with the operations to be conducted hereunder. Should the establishment of such easements permanently deprive Concessionaire of the use of a portion of the Concession Premises, an abatement of payments shall be provided in an amount proportional to the total area of the Concession Premises in the before and after conditions.

**Section 18. Cancellation.** (a) Upon the occurrence of any one or more of the events of default hereinafter described, and Concessionaire's failure to timely cure such default, this Agreement shall be subject to cancellation. As a condition precedent thereto, the Managing Director shall give Concessionaire ten (10) days' written notice by registered or certified mail.

(b) Upon cancellation, County shall have the right to take possession of the Concession Premises, including all improvements, equipment and inventory located thereon, and use same for the purpose of satisfying and/or mitigating all damages arising from a breach of this Agreement.

(c) Action by County to effectuate a cancellation and forfeiture of possession shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

(d) Any trustee, beneficiary, mortgagee or lender (hereinafter, "Lender") under a hypothecation or mortgage previously approved by the Managing Director shall have the right at any time during the term of this Agreement to undertake any and all action that may be required in order to prevent a cancellation of this Agreement and a forfeiture of the operation. Accordingly, the Managing Director shall send a copy of any intended cancellation of this Agreement to any of the aforementioned parties whose security would be affected thereby, and upon request thereof for postponement, extend the date set therefor by such time as the Managing Director finds reasonable in order to allow said parties to correct the grounds therefor or to provide a new lessee under a power of sale or foreclosure contained in the hypothecation or mortgage, who upon transfer thereto shall become responsible for the correction thereof within such time as may be allowed by the Managing Director.

(e) The Managing Director shall provide to a lender a copy of any written notice of default served upon Concessionaire, provided that such Lender shall have previously registered with the Managing Director by written notice specifying the name and address of said Lender, at the same time the Managing Director provides such notice to the Concessionaire. With regard to monetary defaults and other non-monetary defaults which are curable by Lender, the County shall not terminate this Agreement so long as Lender, after receiving written notice of such defaults and within a reasonable time after the expiration of the Concessionaire's curative periods to cure the defaults as specified in Events of Default hereinafter, commences promptly to pay or to institute foreclosure proceedings to foreclose the deed of trust and proceeds with the due diligence thereafter to prosecute such proceedings to a conclusion or to cure the defaults. With regard to defaults which cannot be cured by Lender, the County shall not terminate this Agreement so long as Lender, after receiving written notice of such defaults and within a reasonable time after the expiration of the lessee's curative periods to cure the defaults as specified in **Section 19** (Events of Default) hereinafter promptly institutes foreclosure proceedings to foreclose the deed of trust and proceeds with due diligence thereafter to prosecute such proceedings to a conclusion. In the event that this Agreement is rejected by a trustee in bankruptcy due to lessee's bankruptcy, the County shall provide to lender or its assignee an option to enter into a new lease agreement with the County upon the same terms and conditions as are contained in this Agreement and for the balance of the term thereof

**Section 19. Events of Default.** (a) The abandonment, vacation or discontinuance of operations as required hereunder.

(b) The failure of Concessionaire to punctually pay or make the payments required herein when due, where the delinquency continues beyond ten (10) days following written demand for payment thereof.



(c) The failure of Concessionaire to operate or perform in the manner required by this Agreement, where such failure continues for more than ten (10) days after written notice from the Managing Director to correct the condition therein specified.

(d) The failure to maintain the Concession Premises and the improvements constructed thereon in the state of repair required hereunder, and in a clean, sanitary, safe and satisfactory condition where such failure continues for more than ten (10) days after written notice from the Managing Director for correction thereof provided that where fulfillment of such obligation requires activity over a period of time and Concessionaire shall have commenced to perform whatever may be required to cure the particular default within ten (10) days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the Managing Director.

(e) The filing of a voluntary petition in bankruptcy by Concessionaire, the adjudication of Concessionaire as a bankrupt, the appointment of any receiver of Concessionaire's assets; the making of a general assignment for the benefit of creditors, a petition or answer seeking an arrangement for the reorganization of Concessionaire under any law; the occurrence of any act which operates to deprive Concessionaire permanently of this rights, powers and privileges necessary for the proper conduct and operation of the concession; the levy of any attachment or execution which substantially interferes with Concessionaire's operations under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

(f) Determination by the Managing Director, the State Fair Employment Commission, or the federal Equal Employment Opportunity Commission of discrimination having been practiced by Concessionaire in violation of state and/or federal laws.

(g) An uncured breach of any material term not otherwise mentioned where such breach continues for more than ten (10) days after written notice to cure such default.

**Section 20. Cancellation for Improper Consideration.** (a) The County may, by written notice to the Concessionaire, immediately cancel the right of the Concessionaire to proceed under this Agreement if it is found that consideration, in any form, was offered or given by the Concessionaire, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to the Concessionaire's performance pursuant to this Agreement. In the event of such termination, the County shall be entitled to pursue the same remedies against the Concessionaire as it could pursue in the event of default by the Concessionaire.

(b) The Concessionaire shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.

(c) Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

**Section 21. Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program.** (a) Failure of Concessionaire to maintain compliance with the requirements set forth in **Section 16** (Warranty of Adherence to County's Child Support Compliance Program), shall constitute a default by Concessionaire under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure to cure such default within 90 days of notice by the County District Attorney or Department of Child Support Services shall be grounds upon which the Managing Director may terminate this Agreement pursuant to **Section 18** (Cancellation).

**Section 22. Default Regarding Use of County Lobbyists.** (a) Concessionaire and each County Lobbyist or County Lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by Concessionaire shall fully comply with the County Lobbyist Ordinance, Los Angeles County Code 2.160. Failure on the part of the Concessionaire or any County Lobbyist or County Lobbyist firm retained by Concessionaire to fully comply with the County Lobbyist ordinance shall constitute a material breach of this Agreement upon which County may immediately terminate or suspend this Agreement.

**Section 23. Conflict of Interest.** (a) No County employee whose position with the County enables such employee to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Concessionaire or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Concessionaire who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

(b) The Concessionaire shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Concessionaire warrants that it is not now aware of any facts that create a conflict of interest. If the Concessionaire hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this **Section 23** shall be a material breach of this Agreement.

**Section 24. Consideration of Hiring County Employees Targeted for Layoff/or Re-employment List.** Should the Concessionaire require additional or replacement personnel after the effective date of this Agreement to perform the services set forth herein, the Concessionaire shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Agreement.

**Section 25. Consideration of Hiring GAIN/GROW Program Participants.** (a) Should the Concessionaire require additional or replacement personnel after the effective date of this Agreement, the Concessionaire shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Concessionaire's minimum qualifications for the open position. For this purpose, consideration shall mean that the Concessionaire will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Concessionaire.

(b) In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

**Section 26. Concessionaire's Responsibility and Debarment.** (a) **Responsible Contractor.** A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Agreement. It is the County's policy to conduct business only with responsible contractors.

(b) **Chapter 2.202 of the County Code.** The Concessionaire is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Concessionaire on this or other agreements which indicates that the Concessionaire is not responsible, the County may, in addition to other remedies provided in the Agreement, debar the Concessionaire from bidding or submitting proposals on any County agreements for a specified period of time not to exceed three (3) years, and terminate any or all existing agreements the Concessionaire may have with the County.

(c) **Non-responsible Contractors.** The County may debar Concessionaire if the Board of Supervisors finds, in its discretion, that the Concessionaire has done any of the following: (1) violated any term of an agreement with the County, (2) committed any act or omission which negatively reflects on the Concessionaire's quality, fitness or capacity to perform an agreement with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

(d) **Contractor Hearing Board.** (1) If there is evidence that the Concessionaire may be subject to debarment, the Arts Commission will notify the Concessionaire in writing of the evidence that is the basis for the proposed debarment and will advise the Concessionaire of the scheduled date for a debarment hearing before the Contractor Hearing Board.

(2) The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Concessionaire and/or the Concessionaire's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the Concessionaire should be debarred, and, if so, the appropriate length of time of the debarment. If the Concessionaire fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, the Concessionaire may be deemed to have waived all rights of appeal.

(3) A record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

(d) **Subcontractors of Concessionaire.** These terms shall also apply to subcontractors of the Concessionaire.

**Section 27. Public Records Act.** (a) Any documents submitted by Concessionaire; all information obtained in connection with the County's right to audit and inspect Concessionaire's documents, books, and accounting records pursuant to **Section 5 (c)** of this Agreement; as well as those documents which were required to be submitted in response to a request for proposals (RFP) used in the solicitation process for the Prior Agreement, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the *California Government Code* Section 6250 *et seq.* (Public Records Act) and which are marked "trade secret," "confidential," or "proprietary." The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order of court of competent jurisdiction.

(b) In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of an RFP marked "trade secret", "confidential", or "proprietary", the Concessionaire agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

**Section 28. Waiver.** (a) Any waiver by County of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of County to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or stopping the County from enforcing the full provisions thereof.

(b) No delay, failure, or omission of the County to re-enter the Concession Premises or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter accrued shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.

(c) No written notice to Concessionaire shall be required to restore or revive “time of the essence” after the waiver by County of any default.

(d) No option, right, power, remedy or privilege of County shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given by County by this Agreement shall be cumulative.

**Section 29. Right of Entry.** In the event of an abandonment, vacation or discontinuance of concession operations as required hereunder, Concessionaire hereby irrevocably appoints County as an agent for continuing operation of the concession granted herein, and in connection therewith authorizes the officers and employees thereof to (a) take possession of the Concession Premises, including all improvements, equipment and inventory thereon; (b) remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Concessionaire; (c) sublease or license the premises; and (d) after payment of all expenses of such subleasing or licensing apply all payments realized therefrom to the satisfaction and/or mitigation of all damages arising from Concessionaire’s breach of this Agreement. Entry by the officers and employees of County upon the Concession Premises for the purpose of exercising the authority conferred hereon as agent of Concessionaire shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

**Section 30. Surrender.** Upon expiration of the term of this Agreement, or cancellation thereof as herein provided, Concessionaire shall peaceably vacate the Concession Premises and any and all improvements located thereon and deliver up the same to County in a reasonably good condition, ordinary wear and tear excepted subject to the right of County to demand removal thereof to the extent that **Section 2 (f)** may be applicable thereto.

**Section 31. Interpretation.** (a) This Agreement shall be interpreted in accordance with the laws of the State.

(b) The headings herein contained are for convenience and reference only and are not intended to define or limit the scope of any provision thereof.

(c) No provision of this Agreement is to be interpreted for or against either party because that party or that party’s legal representative drafted such provision.

(d) The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

(1) “Arts Commission” shall mean the Los Angeles County Arts Commission or an authorized representative thereof.

(2) “Concession” shall mean the privilege of engaging in the commercial activities authorized herein.

(3) “Gross receipts” shall mean all money, cash receipts, assets, property or other things of value, including but not limited to gross charges, sales, rentals, fees and commission made or earned by Concessionaire, and/or assignees, sublessees, or permittees thereof, whether collected or accrued from any business, use or occupation, or any combination thereof, transacted, or performed in whole or in part, on the Concession Premises, including, but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise. There shall be deducted from said gross receipts, the following:

(A) Sales and excise taxes applicable thereto, required to be collected by Concessionaire, and/or the sublessees or permittees thereof.

(B) Federal, state, municipal or other taxes collected from the consumers, regardless of whether the amount thereof is stated to the consumer as a separate charge, provided the amount of such taxes shall be shown on the accounting records for the concession and gift shop as hereinafter required.

(4) "State" shall mean the State of California.

**Section 32. Severability.** If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby and shall remain in full force and effect.

**Section 33. Contract Enforcement and Amendments to the Agreement.** (a) The Managing Director shall be responsible for the enforcement of this Agreement and shall be assisted therein by those officers and employees of County having duties in connection with the administration thereof.

(b) Any officers and/or authorized employees of the County may enter upon the Concession Premises at any and all reasonable times for the purpose of determining whether or not Concessionaire is complying with the terms and conditions hereof or for any other purpose incidental to the rights of County within the Concession Premises.

(c) In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in the action brought thereon.

(d) This Agreement may be modified only by further written agreement between the parties. Any such modification shall not be effective unless and until executed by Concessionaire, and in the case of the County, until approved and executed by the Chair of the Board of Supervisors or the Managing Director unless otherwise authorized herein.

**Section 34. Notices.** (a) Any written notice required to be given under the terms of this Agreement or any law applicable thereto may be placed in a sealed envelope, with postage paid, addressed to the person on whom it is to be served and deposited in a post office, mail box, sub post office, substation or mail chute, or other like facility regularly maintained by the United States Postal Service. Service by mail shall be deemed complete upon deposit in the above-mentioned manner.

(b) The address to be used for any written notice served by mail upon Concessionaire shall be Diamond & Elias Restaurants, 861 N. La Cienega Blvd., Los Angeles, CA 90069, or such other place as may hereinafter be designated in writing to the Managing Director by Concessionaire.

(c) Any written notice served by mail upon County shall be addressed to the Arts Commission, 374 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012, or such other place as may hereinafter be designated in writing to Concessionaire by the Managing Director.

**Section 35. Warranty Against Contingent Fees.** (a) The Concessionaire warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Concessionaire for the purpose of securing business.

(b) For breach of this warranty, the County shall have the right to terminate this Agreement and, at its sole discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**Section 36. Entire Agreement.** This Agreement, and the exhibits attached hereto, constitutes the entire agreement between the County and Concessionaire for the concession and use granted for food and beverage services at the Ford Theatre. All other agreements, promises and representations with respect thereto, other than those contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the exhibits attached hereto, the terms, conditions, promises and covenants relating to the concession and the premises to be used in the conduct thereof.

**IN WITNESS WHEREOF**, the County of Los Angeles and the Concessionaire have caused this Agreement for the Operation of Concessions at the John Anson Ford Amphitheatre to be executed on their behalf by their duly authorized representatives. The person signing on behalf of the Concessionaire warrants under penalty of perjury that he or she is authorized to bind the Concessionaire.

**COUNTY OF LOS ANGELES**

By: \_\_\_\_\_  
DON KNABE  
Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer-  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy

APPROVED AS TO FORM

LLOYD W. PELLMAN  
County Counsel

By \_\_\_\_\_

**DIAMOND & ELIAS RESTAURANTS, INC.**  
**“CONCESSIONAIRE”**

By: \_\_\_\_\_  
CHRIS DIAMOND  
President